IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

F.A.O. No.3044 of 2005
Date of decision: 28.8.006

Rajbir Singh and another.

..... Appellants

Versus

The National Insurance Company Ltd. and another.

..... Respondents

CORAM : Hon'ble Mr.Justice Uma Nath Singh
Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri Jagbir Malik, Advocate for the appellants.
Shri Kamal Sehgal, Advocate for respondent no.1.

....

Mahesh Grover,J.

The present appeal has been filed by the driver and the owner of the Maruti Van which is said to have caused the accident resulting in the serious multiple injuries to Arjun Singh son of Hari Singh (respondent no.2). In a claim petition filed by respondent no.2, the Motor Accident Claims Tribunal, Sonepat (hereinafter described as `the Tribunal'), awarded an amount of Rs.76,000/- as compensation along with interest at the rate of 6% per annum. The Tribunal exonerated the Insurance Company on the ground that driving licence, Exhibit R1, entitled its holder to drive only motor cycle and tractor and not jeep or car.

Learned counsel for the appellant contended that there was an endorsement on the driving licence and the words “car and jeep” had also been added thereon and that the Tribunal had wrongly ignored these words

while recording the aforementioned finding.

After hearing the learned counsel for the appellant and perusing the record, we are of the view that the Tribunal has erred in recording a finding whereby it absolved the Insurance Company of the liability to pay compensation. Once the licence had been produced on record and an endorsement thereon clearly showed that the holder was entitled to drive car and jeep, then it was for the Insurance Company to adduce evidence to establish that the same was either fake or wrong. No evidence has been adduced by the Insurance Company to prove the factum of the licence being fake or not being valid. It may also be mentioned here that the Insurance Company has not disputed the factum of the vehicle in question having been validly insured. The Supreme Court in Skandia Insurance Co.Ltd. Versus Kokilaben Chandravadan and others, 1(1987) A.C.C. 413 has held as follows:-

> "Section 96(2)(b)(ii) extends immunity to the Insurance Company if a breach is committed of the condition excluding driving by a named person or persons or by any person who is not fuly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification. The expression `breach' is of great significance. The dictionary meaning of `breach' is `infringement or violation of a promise or obligation'. (See Collins English Dictionary). It is therefore abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is not duly licensed will have to be in charge of the vehicle.

> The very concept of infringement or violation of the promise that the expression `breach' carries within itself induces an inference that the violation or infringement on the part of the promisor must be a wilful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is `guilty' of the breach of the promise that the vehicle will be driven by a licensed driver."

In view of the above law laid down by the Apex Court, we have no hesitation to hold that the Tribunal has committed an error in absolving the Insurance Company of its liability to pay the compensation when the vehicle in question stood insured with it because it has failed to establish that appellant-driver was not having a valid driving licence or that there was a breach of terms of the insurance policy.

On the basis of the above discussion, the appeal is allowed and the impugned award is modified to the extent that the Insurance Company of the offending vehicle, i.e. respondent no.1 herein, shall be liable to pay to the claimant-respondent no.2 the amount of compensation and interest as awarded by the Tribunal and the appellants shall be absolved of their liability to pay the said amount.

(Mahesh Grover)
Judge

August 28,2006
"SCM"

(Uma Nath Singh)
Judge